

# ***Significant Sections of the Regulated Riparian Model Water Code***

## **§ 1R-1-01 Protecting the Public Interest in the Waters of the State**

The waters of the State are a natural resource owned by the State in trust for the public and subject to the State's sovereign power to plan, regulate, and control the withdrawal and use of those waters, under law, in order to protect the public health, safety, and welfare by promoting economic growth, mitigating the harmful effects of drought, resolving conflicts among competing water users, achieving balance between consumptive and nonconsumptive uses of water, encouraging conservation, preventing excessive degradation of natural environments, and enhancing the productivity of water-related activities.

## **§ 1R-1-02 Assuring Efficient and Productive Use of Water**

Pursuant to this Code, the State undertakes, by permits and other steps authorized by this Code, to allocate the waters of the State among users in a manner that fosters efficient and productive use of the total water supply of the State in a sustainable manner in the satisfaction of economic, environmental, and other social goals, whether public or private, with the availability and utility of water being extended with a view of preventing water from becoming a limiting factor in the general improvement of social welfare.

## **§ 2R-2-20 Reasonable Use**

"Reasonable use" means the use of water, whether in place or through withdrawal, in such quantity and manner as is necessary for economic and efficient utilization without waste of water, without unreasonable injury to other water right holders, and consistently with the public interest and sustainable development.

## **§ 4R-1-07 Application Fees**

(1) The State Agency shall establish a schedule of application fees to be paid by every person who applies for a permit or registers a water use.

(2) Application fees shall equal the Agency's expenses for processing, monitoring, administering, and enforcing the permit and registration provisions of this Code.

## **§ 4R-1-08 Water Use Fees**

(1) The State Agency shall, by regulation of general application after public notice and hearings, establish a schedule of reasonable water use fees as compensation for the value of water used.

(2) The State Agency shall collect water use fees from every person withdrawing water under a permit issued pursuant to this Code.

(3) Water use fees shall vary only according to the class of use as determined by the purpose or quantity of use.

(4) Such fees shall be paid into the general funds of the State.

## **§ 6R-2-01 Contents of an Application for a Permit**

(1) An application for a permit to withdraw water pursuant to this Code shall contain the following information:

(a) the name and address of the applicant;

(b) the amount of the proposed withdrawal of water, including estimates of the projected daily, monthly, seasonal, and annual mean and peak withdrawals;

(c) the place and source of the proposed withdrawals;

(d) the place and nature of the proposed use of water;

- (e) the place of the proposed return flow of withdrawn water;
- (f) an estimate of the projected overall consumptive use of water;
- (g) the anticipated effects, if any, of the withdrawal on existing or proposed uses dependent on the same water source, along with a list of the persons entitled to notice under § 6R-2-02 in so far as known to the applicant;
- (h) the impact of the proposed withdrawal on other water sources hydrologically interconnected with the water source from which the withdrawal is to be made;
- (i) the current operating capacity of any existing withdrawal system and the effect of the proposed withdrawals on the existing withdrawal system;
- (j) any land acquisition, equipment, energy consumption, or the relocation or re-siting of any existing community, facility, right-of-way, or structure that will be required;
- (k) the total anticipated costs of any proposed construction;
- (l) a list of all federal, State, or local approvals, permits, licenses, or other authorizations required for any part of the proposal;
- (m) a statement of whether and how the proposed withdrawal complies with all applicable plans and strategies for the use, management, and protection of the waters of the State and related land resources;
- (n) the planning status and estimated timetable for the completion of the proposed project;
- (o) a description of alternative means for satisfying the applicant's need for water if the requested permit is denied or modified;
- (p) a description of any plan for conservation the applicant proposes to follow; and
- (q) any other information reasonably required by the State Agency by regulation. ...

#### § 6R-3-01 Standards for a Permit

- (1) The State Agency shall approve an application and issue a permit only upon determining that:
  - (a) the proposed use is reasonable;
  - (b) the proposed withdrawal, in combination with other relevant withdrawals, will not exceed the safe yield of the water source;
  - (c) the proposed withdrawal and use are consistent with any applicable comprehensive water allocation plan and drought management strategies;
  - (d) both the applicant's existing water withdrawals and use, if any, and the proposed withdrawal and use incorporate a reasonable plan for conservation; and
  - (e) the proposed withdrawal and use will be consistent with the provisions of this Code and any order, permit term or condition, and regulation made pursuant to this Code or any other statute pertaining to the use of water.
- (2) In any judicial review of the Agency's determination under subsection (1) of this section, the burden of proof shall be on the person challenging the Agency's determination.

#### § 6R-3-02 Determining Whether a Use Is Reasonable

In determining whether a use is reasonable, the State Agency shall consider:

- (a) the number of persons using a water source and the object, extent, and necessity of the proposed withdrawal and use and of other existing or planned withdrawals and uses of water;
- (b) the supply potential of the water source in question, considering quantity, quality, and reliability, including the safe yields of all hydrologically interconnected water sources;
- (c) the economic and social importance of the proposed water use and other existing or planned water uses sharing the water source;
- (d) the probable severity and duration of any injury caused or expected to be caused to other lawful consumptive and nonconsumptive uses of water by the proposed withdrawal and use under

foreseeable conditions;

(e) the probable effects of the proposed withdrawal and use on the public interest in the waters of the State, including, but not limited to:

- (1) general environmental, ecological, and aesthetic effects;
- (2) sustainable development;
- (3) domestic and municipal uses;
- (4) recharge areas for underground water;
- (5) waste assimilation capacity;
- (6) other aspects of water quality; and
- (7) wetlands and flood plains;

(f) whether the proposed use is planned in a fashion that will avoid or minimize the waste of water;

(g) any impacts on interstate or interbasin water uses;

(h) the scheduled date the proposed withdrawal and use of water is to begin and whether the projected time between the issuing of the permit and the expected initiation of the withdrawal will unreasonably preclude other possible uses of the water; and

(i) any other relevant factors.

#### § 6R-3-04 Preferences Among Water Rights

(1) When the waters available from a particular water source are insufficient to satisfy all lawful demands upon that water source, water is to be allocated by permits up to the safe yield or other applicable limit of allocation of the resource according to the following preferences:

(a) direct human consumption or sanitation in so far as necessary for human survival and health;

(b) uses necessary for the survival or health of livestock and to preserve crops or physical plant and equipment from physical damage or loss in so far as it is reasonable to continue such activities in relation to particular water sources; and

(c) other uses in such a manner as to maximize employment and economic benefits within the overall goal of sustainable development as set forth in the comprehensive water plan.

(2) In processing applications for withdrawals from water sources within the scope of subsection (1) of this section, the State Agency may determine whether applications are competing by aggregating the applications by periods of time, not to exceed one year, the periods to be set by regulation.

(3) Within each preference category, uses are to be preferred that maximize the reasonable use of water.

(4) Applications to renew a permit issued under this Code shall be evaluated by the same criteria applicable to an original application, except that renewals shall be favored over competing applications for new withdrawals if the public interest is served equally by the competing water uses after giving consideration to the prior investment pursuant to a valid water right in related facilities as a factor in determining the public interest.

#### § 7R-1-01 Permit Terms and Conditions

If the State Agency approves an application for a new, renewed, or modified permit, the Agency shall modify an existing permit or issue a new one, indicating in the permit the following terms and conditions:

(a) the location of the withdrawal;

(b) the authorized amount of the withdrawal and the level of consumptive use, if any, and required conservation measures, if any;

(c) the dates or seasons during which water is to be withdrawn, including any seasonal or shorter variations in the authorized withdrawals or level of consumptive use;

(d) the uses for which water is authorized to be withdrawn;

(e) the amount of return flow required, if any, and the required place of discharge, if any;

- (f) the requirements for metering, surveillance, and reporting as the State Agency determines to be necessary to ensure compliance with other conditions, limitations, or restrictions of the permit, including consent to inspections or investigations as provided in section 4R-4-01 of this Code;
- (g) the time within which all necessary construction authorized by the permit must be completed or within which the withdrawal or use of water must begin to be made, with the delay not to exceed one-half of the duration of the permit, subject to extension by order of the State Agency for cause shown;
- (h) any extraordinary withdrawals of the waters of the State necessary for the construction of any facilities necessary to withdraw or use the water;
- (i) any obligation to restore the lands or waters of the State to their condition prior to the issuance of the permit upon its expiration;
- (j) the date on which the permit expires;
- (k) payment by a holder of a water right involving an interbasin transfer of a withdrawal fee to be paid into Interbasin Compensation Fund; and
- (l) any other conditions, limitations, and restrictions the State Agency determines to be necessary to protect the public interest, the environment and ecosystems, the public health, safety, and welfare, and to ensure the conservation, sustainable development, proper management, and aesthetic enhancement of the waters of the State.

#### CHAPTER VII , Part 3: Restrictions during Water Shortages or Water Emergencies

One of the central purposes of a regulated riparian system of water law is to enable a State to cope reasonably and effectively with the recurring shortfalls in water supply that are becoming more frequent in the humid parts of the nation. As a result, water conservation permeates the entire Regulated Riparian Model Water Code, and the Code is suffused by the goal of sustainable development. The dominant mode by which water is managed during periods of water crisis under a regulated riparian system is the pairing of a comprehensive information gathering system with legal authority in the state to restrict uses during periods of shortfalls of water supply notwithstanding the permits authorizing greater use during periods of normal supply. This Part provides authority to the State Agency to respond to such shortfalls and to compel water users to comply with the Agency's strategies and decisions. This Part also deals with certain aspects of water conservation, although other aspects of water conservation are dealt with in Chapters VI and IX.

The Regulated Riparian Model Water Code provides a mechanism to prevent uncontrolled conflict among water rights during periods when the water available falls short of the amounts necessary to satisfy all lawful reasonable uses. Without a hierarchical system of temporal or other rigid priorities, the Code must provide some other basis for resolving the conflicts that arise when water is overallocated or the water sources contain significantly less than their normal volumes.

The Code, consistent with its general approach to the planning and management of the waters of the State, authorizes the Agency to act to reallocate water or otherwise intervene to modify the terms or conditions of permits in order to maximize the public interest during such crises. Generally, restrictions for either water shortages or water emergencies must follow the drought management strategies developed as part of the comprehensive planning process before the shortage or emergency is declared. Drought management strategies will include a set of priorities among water uses, although these priorities must reflect the preferences for certain uses of water found in section 6R-3-04.

The requirement that the State Agency follow previously established drought management strategies serves to make the actions of the Agency predictable, enabling water right holders to plan their reactions even before restrictions are imposed. Still, few actual shortages or emergencies will precisely match any set of assumptions underlying a drought management strategy, and the Agency is authorized to depart from the planned responses when rigid adherence would be inappropriate.